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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

UZMA SHAHID BUTT,
Plaintiff,
v.

CAROLYN W. COLVIN,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,
Defendant.

Case No. LA CV 15-5690 JCG

**MEMORANDUM OPINION AND
ORDER**

Uzma Shahid Butt (“Plaintiff”) challenges the Social Security Commissioner’s decision denying her application for disability benefits. Three issues are presented for decision here:

1. Whether the Administrative Law Judge (“ALJ”) properly determined that Plaintiff could perform her past relevant work as a preschool teacher (*see* Joint Stip. at 4-7, 10);
2. Whether the ALJ properly rejected an examining physician’s opinion (*see id.* at 4, 11-16, 18-19); and
3. Whether the ALJ properly assessed Plaintiff’s credibility (*see id.* at 4, 19-22, 25).

1 The Court addresses Plaintiff's contentions below, and finds that reversal is not
2 warranted.

3 A. The ALJ Properly Determined that Plaintiff Could Perform Past Relevant
4 Work

5 Plaintiff contends that the ALJ erroneously determined at step four of her
6 evaluation, based on a Vocational Expert ("VE")'s testimony, that she could perform
7 her past relevant work as a preschool teacher. Specifically, Plaintiff complains that the
8 residual functional capacity ("RFC") limitation on her ability to perform *any* work
9 "over the shoulder . . . with the right upper extremity" was not included in a
10 hypothetical to the VE. This makes a difference, she alleges, because her "over the
11 shoulder work" limitation would preclude her past relevant work as a preschool
12 teacher in light of the "frequent" reaching requirement of the Dictionary of
13 Occupational Titles ("DOT") description of that job. (*See* Joint Stip. at 4-7, 10; AR at
14 41 (emphasis added), 44.)

15 The Court concludes that Plaintiff is not entitled to relief, for three reasons.

16 1. Step Four Challenge Not Preserved on Appeal

17 First, as a rule, "when claimants are represented by counsel, they must raise all
18 issues and evidence at their administrative hearings in order to preserve them on
19 appeal." *Meanel v. Apfel*, 172 F.3d 1111, 1115 (9th Cir. 1999).

20 In the instant case, Plaintiff was represented by counsel at the administrative
21 hearing and on administrative appeal, but did not raise this issue before the ALJ or the
22 Appeals Council. (AR at 76-81, 248-49); *see Howard v. Astrue*, 330 F. App'x 128,
23 130 (9th Cir. 2009) (claimant waived argument that ALJ's hypotheticals were
24 inadequate where claimant's attorney had an opportunity to pose his own hypotheticals
25 but never mentioned the allegedly erroneously omitted limitation); *Carey v. Apfel*, 230
26 F.3d 131, 146-47 (5th Cir. 2000) (cautioning against allowing claimant to scan record
27 for unexplained conflicts between expert witness testimony and voluminous provisions
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1 of DOT, and then present conflict as reversible error when it was not considered
 2 sufficient to merit adversarial testing during administrative hearing).

3 Accordingly, the issue was not properly preserved for appeal.

4 2. No Conflict Between Job Description and VE's Testimony or
 5 Plaintiff's Limitation

6 Second, even if the issue is not waived, there is no conflict warranting reversal.

7 As a matter of law, neither the DOT nor the testimony of a VE "automatically
 8 'trumps' when there is a conflict" between the two. *Massachi v. Astrue*, 486 F.3d
 9 1149, 1153 (9th Cir. 2007). Instead, if a conflict appears to exist, the ALJ must obtain
 10 a "reasonable explanation" for that conflict. *Id.*; *see also* Soc. Sec. Ruling 00-4p, 2000
 11 WL 1898704, at *4 (Dec. 4, 2000).

12 Here, although the DOT classifies the preschool teacher job as requiring
 13 "frequent" reaching,¹ the DOT is silent as to "over the shoulder" reaching, and thus
 14 does not conflict with either either the VE's testimony or the RFC. (AR at 41, 78); *see*
 15 *Cortez v. Colvin*, 2014 WL 1725796, at *10 (C.D. Cal. Apr. 30, 2014) (no actual
 16 conflict existed between RFC and DOT because DOT is silent on just how much
 17 "reaching" required by claimant's past relevant work must be "overhead"); *Harvey v.*
 18 *Astrue*, 2010 WL 2836817, at *13-14 (N.D. Cal. July 16, 2010) ("Where the DOT does
 19 not include information about a particular aspect of a job . . . [the VE's] testimony
 20 supplements the DOT, rather than conflict[s] with it.")

21 Consequently, no inherent conflict exists between the DOT and either the VE's
 22 testimony or Plaintiff's limitation.

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25 ¹ The "frequent" reaching requirement is part of a database category for the Guide for
 26 Occupational Exploration ("GOE") referenced by the DOT preschool teacher definition, not part of
 27 the actual DOT definition. *See* DOT No. 092.227-018, 1991 WL 646897 (referencing GOE
 28 10.02.03); *Mondragon v. Astrue*, 364 F. App'x 346, 349 n.2 (9th Cir. 2010) (noting the distinction
 between the GOE and DOT). Notably, neither the DOT's preschool teacher definition or the
 referenced GOE provision mentions "over the shoulder" reaching.

1 3. Any Error in Hypothetical Harmless

2 Third, even assuming error in failing to include the limitation in the hypothetical
3 to the VE, Plaintiff was not harmed by the error. (AR at 77); *see Gaston v. Comm’r*
4 *Soc. Sec. Admin*, 577 F. App’x 739, 742 (9th Cir. 2014) (the question whether an ALJ
5 included all limitations in hypothetical is subject to harmless error analysis).

6 Here, the ALJ could properly rely on the VE’s detailed explanation – based on
7 his extensive vocational rehabilitation counseling experience – of the reaching
8 requirements of Plaintiff’s past relevant work, including that (1) most employers
9 discourage preschool teachers from lifting children; (2) reaching above the shoulder is
10 “very rare” in the job; and (3) reaching could be performed with either upper
11 extremity, while Plaintiff was limited to only her right upper extremity. (AR at 76-79);
12 *see Wilson v. Colvin*, 2015 WL 4240734, at *4 (N.D. Tex. July 10, 2015) (despite
13 conflict between occasional reaching limitation in RFC and frequent reaching
14 requirement of job, record provided reasonable basis for relying on VE’s testimony
15 where VE testified claimant could work as receptionist because overhead reaching is
16 “pretty rare” in workplace); *Kuzak v. Colvin*, 2014 WL 4545917, at *13 (N.D. Ohio
17 Sept. 12, 2014) (despite reaching and extreme temperature exposure limitations in
18 RFC, ALJ properly relied on VE testimony that, based on his research and experience,
19 car-wash attendant position did not require overhead reaching and would only “very
20 rarely” require employee to be outside attendant booth).

21 Thus, any error in failing to include the limitation in the hypothetical was
22 harmless.

23 B. The ALJ Properly Rejected an Examining Physician’s Opinion

24 Next, Plaintiff contends that the ALJ improperly rejected the opinion of
25 examining physician Dr. Vagharshak M. Pilossyan. (*See Joint Stip.* at 4, 11-16, 18-
26 19.)

27 As a rule, if an ALJ wishes to disregard the opinion of a treating or examining
28 physician, “he or she must make findings setting forth specific, legitimate reasons for

1 doing so that are based on substantial evidence in the record.” *Murray v. Heckler*, 722
2 F.2d 499, 502 (9th Cir. 1983); *accord Carmickle v. Comm’r, Soc. Sec. Admin.*, 533
3 F.3d 1155, 1164 (9th Cir. 2008).

4 Here, the ALJ properly rejected Dr. Pilossyan’s checklist form opinion that
5 Plaintiff was essentially restricted to less than sedentary work, for three reasons. (AR
6 at 41, 334-35.)

7 First, Dr. Pilossyan saw Plaintiff on only a single occasion. (AR at 44, 336-38);
8 *see Turner v. Comm’r Soc. Sec.*, 613 F.3d 1217, 1223 (9th Cir. 2010) (ALJ properly
9 rejected opinion on basis that doctor had “not had any previous interaction with the
10 claimant” prior to the one examination he based his opinion on); *Aranda v. Comm’r*
11 *Soc. Sec. Admin.*, 405 F. App’x 139, 141 (9th Cir. 2010) (persuasiveness of physician’s
12 opinion must take into account the length of treatment relationship with claimant,
13 frequency of examination, nature and extent of treatment relationship, and opinion’s
14 consistency with the record as a whole).

15 Second, the opinion was inconsistent with the objective medical evidence. (AR
16 at 44); *see Batson v. Comm’r Soc. Sec. Admin.*, 359 F.3d 1190, 1197 (9th Cir. 2004)
17 (“[I]t was permissible for the ALJ to give [medical opinion] minimal evidentiary
18 weight, in light of the objective medical evidence and the opinions and observations of
19 other doctors.”). For example, (1) a magnetic resonance imaging scan of Plaintiff’s
20 left foot was entirely normal, (2) an electromyography report of Plaintiff’s lower
21 extremities showed only mild sensory peripheral neuropathy and no evidence of
22 radiculopathy, and (3) a consultative examination showed no evidence of any physical
23 limitations. (*Id.* at 41-43, 252-54, 280-82, 293.)

24 Third, Dr. Pilossyan’s opinion conflicted with the State agency physician’s
25 opinion that Plaintiff had a far less restrictive RFC. (AR at 44; *compare id.* at 99-101
26 *with id.* at 334-35); *see Batson*, 359 F.3d at 1197; *Kane v. Colvin*, 2015 WL 5317149,
27 at *3 (E.D. Cal. Sept. 10, 2015) (ALJ properly rejected treating physician’s opinion
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1 regarding claimant's standing and walking limitations in part because opinion was
2 contradicted by state agency physicians' less severe limitation findings).

3 Thus, the ALJ properly rejected Dr. Pilossyan's opinion.

4 C. Any Error in Assessing Plaintiff's Credibility Was Harmless

5 Finally, Plaintiff contends that the ALJ improperly assessed her credibility. (*See*
6 *Joint Stip.* at 4, 19-22, 25.)

7 As a rule, an ALJ can reject a claimant's subjective complaints by "expressing
8 clear and convincing reasons for doing so." *Benton ex rel. Benton v. Barnhart*, 331
9 F.3d 1030, 1040 (9th Cir. 2003). "General findings are insufficient; rather, the ALJ
10 must identify what testimony is not credible and what evidence undermines a
11 claimant's complaints." *Brown-Hunter v. Colvin*, 806 F.3d 487, 493 (9th Cir. 2015)
12 (citation and internal quotation marks omitted).

13 Preliminarily, the Court agrees with Plaintiff that the ALJ failed to explain how
14 Plaintiff's daily activities translated to the workplace. (*Joint Stip.* at 21-22; AR at 44);
15 *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007) (ALJ must make "specific findings
16 related to [the daily] activities and their transferability to conclude that a claimant's
17 daily activities warrant an adverse credibility determination"); *Burch v. Barnhart*, 400
18 F.3d 676, 681 (9th Cir. 2005).

19 Nonetheless, any such error is harmless in light of the other valid reasons for
20 rejecting the testimony. *See Carmickle*, 533 F.3d at 1162 (when ALJ provides specific
21 reasons for discounting claimant's credibility, decision may be upheld even if certain
22 reasons were invalid as long as "remaining reasoning and ultimate credibility
23 determination" were supported by substantial evidence (emphasis omitted)); *Strutz v.*
24 *Colvin*, 2015 WL 4727459, at *7 (D. Or. Aug. 10, 2015) (upholding credibility finding
25 because ALJ provided at least one valid reason to discount claimant's testimony).

26 First, while the ALJ failed to make transferability findings regarding her daily
27 activities, she properly relied on Plaintiff's *inconsistent statements* about her ability to
28 perform those activities. (AR at 44); *see Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th

1 Cir. 2014) (an ALJ may consider a variety of factors in weighing a claimant's
2 believability, including ordinary techniques of credibility evaluation, prior inconsistent
3 statements, and testimony by the claimant that "appears less than candid"); *Cook v.*
4 *Astrue*, 2012 WL 5379199, at *5 (C.D. Cal. Oct. 31, 2012) (in assessing claimant's
5 credibility, ALJ properly relied on contradiction between statements in function report
6 and statements made to examining psychiatrist). Significantly, Plaintiff (1) indicated
7 on a function report and a fatigue questionnaire that she could not cook anymore, but
8 told psychiatric examiner Dr. Ernest Banger she could still cook ; (2) testified she
9 could not shop, but indicated on her function report and told Dr. Bagner she could
10 shop; and (3) indicated on her function report that she had problems dressing and
11 bathing, but told Dr. Bagner she was able to do both. (*Id.* at 69, 196-98, 228, 258.)

12 Second, Plaintiff's complaints of depression, difficulty with concentration, and
13 other psychological problems were belied by psychiatric findings that she had only
14 mild limitation in her ability to adapt to work stresses, and no other work-related
15 mental or emotional restriction.² (AR at 42, 44, 72, 319-20); *see Haislip v. Astrue*, 316
16 F. App'x 538, 539 (9th Cir. 2008) (conflicts between claimant's allegations and
17 physician's findings is a clear and convincing reason supporting credibility
18 determination).

19 Third, Plaintiff's allegations of severe symptoms contradicted the objective
20 medical evidence, discussed above. (AR at 43, 252-54, 280-82, 293); *see Rollins v.*
21 *Massanari*, 261 F.3d 853, 856-57 (9th Cir. 2001) (inconsistencies with objective
22 evidence, when combined with other factors, are valid reasons for rejecting a
23 claimant's testimony).

24 Thus, the ALJ's assessment of Plaintiff's credibility does not warrant reversal.

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27 ² The ALJ also found it "notable" that Plaintiff was not taking any psychiatric medications or
28 receiving any mental health treatment. (AR at 44, 317); *see Burch*, 400 F.3d at 681 (ALJ is permitted
to consider lack of medical treatment in assessing credibility).

1 Based on the foregoing, **IT IS ORDERED THAT** judgment shall be entered
2 **AFFIRMING** the decision of the Commissioner denying benefits.

3
4 DATED: April 27, 2016

5 
6 Hon. Jay C. Gandhi
United States Magistrate Judge

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9 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
10 **intended to be included or submitted to any online service such as**
11 **Westlaw or Lexis.**

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